

State of California
BOARD OF EQUALIZATION

ALCOHOLIC BEVERAGE TAX REGULATIONS

Regulation 2552. SPOILED BEER AND WINE.

Reference: Sections 32171, 32173, and 32176, Revenue and Taxation Code.

A beer and wine importer will be allowed a credit for beer and wine sold and subsequently returned as spoiled, when the spoiled beer or wine is destroyed under the supervision of a representative of the board. For small quantities of beer or wine destroyed, which are not supervised by a representative of the Board, the exemption or credit is allowed only after prior written approval is obtained from the Board.

To secure prior written approval, the beer and wine importer must submit a written request to the Board, listing the type of beverage, the number of containers, the container sizes and the total gallons to be destroyed.

After receiving approval from the Board and after destroying the beer or wine, the beer and wine importer must submit a declaration signed under penalty of perjury, listing the number of containers, the container sizes, the total gallons destroyed and the date and manner of destruction. The declaration must be signed by a person in authority in the importer's organization who witnessed the destruction of the beer or wine.

For the purposes of this regulation, small quantities means 2,500 gallons or less of beer, 2,500 gallons or less of still wine, and 1,500 gallons or less of champagne or sparkling wine by volume.

History: Effective April 17, 1955.

Amended August 17, 1976, effective September 19, 1976.

Amended April 9, 1980, effective June 19, 1980. Adjusted "small quantities" in the last sentence.

Amended November 28, 1995, effective March 8, 1996.

The title was expanded to indicate that the regulation contains the rules for obtaining an exemption and credit for spoiled beer and wine. Previously, the regulation required that spoiled beer and wine be destroyed in the physical presence of a Board representative. Language in the first paragraph was changed from "in the presence" to "under the supervision of a representative of the Board" to eliminate the often unnecessary physical presence requirement. There is also clarification that small quantities of beer and wine may be destroyed without Board supervision provided that prior written approval is obtained.

The third paragraph describes the way in which the beer and wine importer verifies that the produce has been destroyed. Previously, the regulation required submission of an affidavit. The word "affidavit" was changed to "declaration" to conform to California Code of Civil Procedure section 2015.5, which states that a declaration under penalty of perjury is the form preferred in this state.

In the fourth paragraph, the definition of "small quantities" was changed from "1250" to "2500 gallons or less of beer" and from "150" to "1500 gallons or less of champagne or sparkling wine by volume." The previous definitions derived from a time when there was a significant excise tax differential on the different alcoholic beverages. Currently, the taxes on beer and wine are the same. The purpose of the definitional change was to equalize the situation for all of the alcoholic beverages.

Amended November 13, Effective March 6, 2003. Amended to clarify that credit is allowable only for tax-paid beer or wine that has spoiled, pursuant to section 32176 of the Alcoholic Beverage Tax Law.